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14

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15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 BANK OF NEW YORK MELLON,

18 Plaintiff,

19 vs.

20 FIDELITY NATIONAL TITLE GROUP,
INC., ET AL.,

21 Defendants.
22

23 Case No.: 2:21-CV-00452-RFB-VCF

24 **STIPULATION TO STAY CASE
PENDING *WELLS FARGO II* APPEAL**

25 Plaintiff Bank of New York Mellon (“BONY”) and Defendants Fidelity National Title
26 Group, Inc., Chicago Title Insurance Company, and Ticor Title of Nevada, Inc. (collectively,
27 “Defendants,” and with BANA, the “Parties”), by and through their undersigned counsel, stipulate
28 and agree as follows, subject to the approval of the District Court:

1 **WHEREAS**, this is one of several title insurance coverage disputes pending in this district
 2 following an HOA foreclosure sale. The majority of cases concern the ALTA 1992 loan policy of
 3 title insurance with form 1 coverage, along with the CLTA 100/ALTA 9 Endorsement and either
 4 the CLTA 115.1/ALTA 4 Endorsement or the CLTA 115.2/ALTA 5 Endorsement;

5 **WHEREAS**, one such matter is on appeal in *Wells Fargo Bank, N.A. v. Fidelity National*
 6 *Title Ins. Co.*, Ninth Cir. Case No. 19-17332 (District Court Case No. 3:19-cv-00241-MMD-
 7 WGC) (the “*Wells Fargo II Appeal*”). The parties to that case—whose counsel are also counsel in
 8 this action—have been advised that the Ninth Circuit is considering the *Wells Fargo II Appeal* for
 9 oral argument sometime in the Summer of 2021;

10 **WHEREAS**, the Parties anticipate that the Ninth Circuit Court of Appeals’ decision in the
 11 *Wells Fargo II Appeal* will likely touch upon issues regarding the interpretation of the title
 12 insurance policy that could potentially affect the disposition of this action, particularly given some
 13 of the similarities between the policy at issue in *Wells Fargo II Appeal* and the policy here;

14 **WHEREAS**, BONY has filed a motion to remand this action to the Eighth District Court
 15 (ECF No. 10) and a motion for fees (ECF No. 11);

16 **WHEREAS**, Defendants’ time to oppose the motion to remand, to oppose the motion for
 17 fees, and to file responsive pleadings has not yet expired;

18 **WHEREAS**, because the *Wells Fargo II Appeal* has the potential to resolve certain
 19 matters at issue in this case, the Parties stipulate and agree that a stay in this particular case
 20 pending the outcome *Wells Fargo II Appeal* is appropriate;

21 **NOW THEREFORE**, the Parties, by and through their undersigned counsel, hereby
 22 stipulate and agree as follows:

23 1. The instant action shall be **STAYED** pending the issuance of the mandate pursuant
 24 to Fed. R. App. P. 41(a) in the *Wells Fargo II Appeal*.

25 2. Defendants’ deadline to oppose BONY’s motion to remand this action to the
 26 Eighth District Court (ECF No. 10) and motion for fees (ECF No. 11) is hereby **CONTINUED**,
 27 and will be reset by mutual agreement of the Parties once the stay is lifted, without prejudice to
 28 any arguments that Defendants might assert in opposition to those motions.

1 3. To the extent that BONY has served the complaint and summons on any of
2 Defendants, their deadline to file a responsive pleading arising under Fed. R. Civ. P. 12 is hereby
3 **VACATED** without prejudice to any defenses that such Defendants might assert under Fed. R.
4 Civ. P. 12. Defendants' deadline to file responsive pleadings will be reset when the stay of this
5 action is lifted.

6 4. The Parties shall submit their proposed schedule to complete briefing on the
7 motion to remand, the motion for fees, and for the served Defendants to file their responsive
8 pleadings within 30 days of when the stay is lifted.

9 5. Each of the Parties may request a Fed. R. Civ. P. 26(f) conference at any time 180
10 days after the order granting this stipulation.

11 6. By entering into this stipulation, none of the Parties is waiving its right to
12 subsequently move the Court for an order lifting the stay in this action.

13 7. Nothing contained in this stipulation will prevent the Parties from propounding and
14 enforcing subpoenas to third parties for the purposes of preserving evidence in the possession of
15 third parties.

16 Dated: April 20, 2021

WRIGHT, FINLAY & ZAK

17 By: /s/-Lindsay D. Robbins

18 LINDSAY D. ROBBINS
19 Attorneys for Plaintiff
BANK OF NEW YORK MELLON

20 Dated: April 20, 2021

SINCLAIR BRAUN LLP

21 By: /s/-Kevin S. Sinclair

22 KEVIN S. SINCLAIR
23 Attorneys for Defendants
FIDELITY NATIONAL TITLE GROUP,
INC., CHICAGO TITLE INSURANCE
COMPANY, and TICOR TITLE OF
NEVADA, INC.

24
25 **IT IS SO ORDERED.**

26 Dated this 22nd day of April , 2021.



27
28 RICHARD F. BOULWARE
UNITED STATES DISTRICT JUDGE